

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN LIMBIRD DAVIS,
Plaintiff,
v.
V. ROY LEFCOURT,
Defendant.

Case No. [16-cv-04980-JD](#)

**ORDER REVOKING
PLAINTIFF'S IN FORMA
PAUPERIS STATUS AND
DENYING MOTION TO FILE AN
AMENDED COMPLAINT**

Re: Dkt. No. 15

Plaintiff, a detainee, filed a pro se civil rights complaint under 42 U.S.C. § 1983 that was dismissed at screening. Plaintiff filed an appeal with the Ninth Circuit and the case has been referred back to this Court for the limited purpose of determining whether plaintiff's in forma pauperis status should continue or whether the appeal is frivolous or taken in bad faith.

An indigent party who cannot afford the expense of pursuing an appeal may file a motion for leave to proceed in forma pauperis. Fed. R. App. P. 24(a); 28 U.S.C. § 1915(a)(1). Pursuant to Federal Rule of Appellate Procedure 24(a), "a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court." The party must attach an affidavit that (1) shows in detail "the party's inability to pay or give security for fees and costs," (2) "claims an entitlement to redress," and (3) "states the issues that the party intends to present on appeal." Fed. R. App. P. 24(a)(1). However, even if a party provides proof of indigence, "an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). An appeal is in "good faith" where it seeks review of any issue that is "non-frivolous." *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). An issue is "frivolous" if it has "no arguable basis in fact or law." *See O'Loughlin v. Doe*, 920

1 F.2d 614, 617 (9th Cir. 1990).

2 Plaintiff alleged that his defense attorney did not properly handle his criminal case.
3 Plaintiff sought money damages. Plaintiff was given an opportunity to amend but the case was
4 dismissed because a public defender does not act under color of state law, an essential element of
5 an action under 42 U.S.C. § 1983, when performing a lawyer's traditional functions, such as
6 entering pleas, making motions, objecting at trial, cross-examining witnesses, and making closing
7 arguments. *Polk County v. Dodson*, 454 U.S. 312, 318–19 (1981). A private attorney
8 representing a defendant or appellant also is not a state actor. *See Simmons v. Sacramento County*
9 *Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003).

10 Because the law is well settled that his complaint fails to state a claim the appeal is
11 meritless and frivolous. Therefore, plaintiff's in forma pauperis status is **REVOKED**. The Clerk
12 shall forward this Order to the Ninth Circuit in case No. 17-15482. Plaintiff's motion to amend
13 (Docket No. 15) is **DENIED** for the reasons set forth in the prior order and because further
14 amendment would be futile.

15 **IT IS SO ORDERED.**

16 Dated: March 27, 2017

17
18 
19 _____
20 JAMES DONATO
21 United States District Judge
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN LIMBIRD DAVIS,
Plaintiff,
v.
V. ROY LEFCOURT,
Defendant.

Case No. [16-cv-04980-JD](#)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 27, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

John Limbird Davis
#16664426
850 Bryant Street
San Francisco, CA 94103

Dated: March 27, 2017

Susan Y. Soong
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO